S.B. CIVIL MISC. APPEAL NO.1498/2006.
(Lekh Ram Vs. The United Insurance Co. Ltd. & Ors.)

Date of Order :::: 29th March 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. G.R. Punia, for the appellant.

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By way of this appeal against the award dated 20.06.2006 made by the Motor Accidents Claims Tribunal, Nagaur in Claim Case No.43/2005, the claimant-appellant seeks enhancement over the amount of Rs.4,500/- with interest @ 7% per annum from the date of filing of claim application awarded by the Tribunal as compensation for the loss suffered by him due to the injuries sustained in a vehicular accident.

The claim application was filed by the claimant-appellant on 20.07.2005 stating his age at 50 years and income at Rs.3,500/- per month from agriculture, dairy farming and driving. The claimant averred that the accident occurred on 20.04.1999 at about 1:30 p.m. on Nagaur to Nokha route when the jeep bearing registration No. RJ 21 T 0141 he was travelling in was hit by oncoming truck bearing registration No. RJ 01 G 0728; that he sustained injuries including fracture at

right leg and remained hospitalised at Nokha and Bikaner and then from 22.08.1999 to 23.09.1999 at SMS Hospital, Jaipur and spent substantial amount on his treatment; and that he has suffered permanent disablement, was under regular pain and sufferings and was totally deprived of his earning capacity. The claimant sought compensation against the drivers, owners, and insurers of both the vehicles and, of course, pointed out in paragraph 27(3) of the claim application that he was nephew of the jeep owner.

After receiving replies, framing relevant issues, taking evidence, and hearing the parties, the Tribunal proceeded to find in issue No.1 that the accident occurred for rash and negligent driving of the truck in question and held the persons related with the truck liable for compensation.

Taking up quantification of compensation in issue No.3, the Tribunal referred to a copy of disablement certificate Ex.11-A filed by the claimant wherein the medical officers of the Government Hospital, Nagaur stated the percentage of his disablement at 50%; but rejected the same from consideration for want of proof with examination of the relevant witnesses. The Tribunal also observed that though the claimant suggested having spent about rupees one lac on treatment but has not filed any bill relating to such expenditure and merely produced the injury report Ex. 4. The Tribunal then referred to

this injury report Ex.4 and noticed that the claimant sustained only four simple injuries. In this view of the matter, the Tribunal allowed Rs.4,000/- for such simple injuries at Rs.1,000/- each; and further allowed Rs.500/- towards physical pain and mental agony; and observed that no other component of loss was established in the present case. While making the award in the sum of Rs.4,500/-, the Tribunal also allowed interest @ 7% per annum from the date of filing of the claim application.

Assailing the award aforesaid and seeking enhancement learned counsel for the appellant contended that the Tribunal has been in error in not believing on the certificate Ex.11-A though issued by the medical officers of the Government Hospital in discharge of their official duties and there being no requirement of producing the doctors concerned for proving the same. Learned counsel further contended that in view of disablement of the appellant, certified by the doctors at 50%, reasonable compensation on pecuniary as well as on non-pecuniary loss ought to have been allowed; and that the Tribunal has been in error in not allowing even a reasonable amount towards treatment expenditure though the claimant having undergone extensive treatment remains a fact undeniable.

Having given a thoughtful consideration to the submissions made by the learned counsel and having

examined the record, this Court is satisfied that the present appeal remains fundamentally bereft of substance.

From the injury report Ex.4, it is clear that the claimant-appellant had suffered four injuries thus: (i) abrasion ¼“ x ¼” at middle of the nose; (ii) abrasion 2” x ¼” above the right wrist joint; (iii) swelling with pain 1” x 1” at right pelvis bone joint; (iv) and abrasion ½ ” x ½” at right knee joint. All the four injuries have been stated to be simple in nature and there is nothing further on record to show if there was any fracture of any bone as suggested by the claimant in his statement. Then, there is not an iota of evidence on record to show if the claimant-appellant remained hospitalised at Nokha, Bikaner and Jaipur and spent any amount on treatment.

The story about the certificate of permanent disability Ex.11-A remains rather queer. The certificate has been obtained on 13.02.2006 i.e., after about seven years of the date of accident. In the said certificate, in relation to the particulars required to be stated about 'history of illness/trauma with duration', the doctors concerned have chosen to say thus: 'post traumatic deformity Rt. hip c shortening of LL'; and on this basis have stated aggregate percentage of permanent disability at '50%'. The fundamental fact about the duration of such alleged ‘post traumatic deformity of hip with shortening of lower limb’ has not been

stated at all. Then, it is difficult to appreciate that the doctors concerned have chosen to certify such disability in a cryptic manner at '50%' without stating if the said was the disability of the limb concerned or of the whole body; as to whether they examined any past record; as to what examination were conducted by them on the person concerned; and as to how they arrived at the finding about the extent of disablement at 50%? Such certificate is not worth even its ink; and the Tribunal cannot be said to have erred in rejecting the same.

It is true that the Tribunal has observed about want of proof of the certificate Ex.11-A by the relevant witness and may be in a given case, such medical opinion extended by the medical officer in discharge of his official duties could be acted upon with requiring formal proof; but the significant facts remain that the accident occurred as back as on 20.04.1999 and the injury report Ex.4 drawn on the date of accident shows the claimant having sustained simple injuries only and then, there is no evidence about the claimant having undergone any treatment for the injuries sustained in the accident. Having regard to the relevant facts, surrounding circumstances, and the nature of certificate, it is obvious that such a cryptic and cursory certificate, issued nearly 7 years after the incident without even reference to the injuries sustained in the accident, cannot be relied upon unless corroborated properly.

It cannot be assumed that the said certificate Ex.11-A got issued nearly 7 years after the incident relates to any disablement having occurred because of the injuries sustained in the accident that were simple injuries as shown in the injury report Ex.4. The certificate in question cannot at all be co-related with the injuries sustained in the accident; and then, the suggestion about extent of disablement at 50% gives rise to more questions rather than supplying any answers.

The present one is a case where not an iota of evidence has been placed on record to show any treatment the claimant had undergone; and the Tribunal cannot be said to have erred in rejecting the component of treatment expenditure.

It is also noticed that in the claim application filed on 20.07.2005 the claimant stated his age at 50 years, the same as stated in his injury report dated 20.04.1999. The claimant made amends only while deposing before the Tribunal on 22.05.2006 and stated his age at 57 years. Obviously, the claim application was made 6 years after the incident with incorrect statement on the material fact about the age of claimant only in order to seek excessive compensation by impleading, amongst others, the persons related with the jeep the claimant was allegedly occupying at the time of incident, which belongs to none other than his uncle.

On the whole, the claim application itself does not

inspire confidence; and in any case there is no evidence available on record for which any amount further than Rs.4,500/- allowed by the Tribunal be considered as just compensation in this case.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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